UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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TERRIA McKNIGHT, Plaintiff, v. NEVADA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF WELFARE AND SUPPORTIVE SERVICES; NEVADA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF WELFARE AND SUPPORTIVE SERVICES ADMINISTRATIVE ADJUDICATION OFFICE, Defendants.	Case No. 3:17-cv-00483-MMD-VPC ORDER

I. SUMMARY

Before the Court is the Report and Recommendation of United States Magistrate Judge Valerie P. Cooke (ECF No. 3) ("R&R") relating to Plaintiff's application to proceed *in forma pauperis* ("IFP Application") (ECF No. 1) and *pro se* complaint (ECF No. 1-1). Plaintiff filed her objection on November 6, 2017 ("Objection"). (ECF No. 4.)

For the reasons discussed herein, the Court accepts in part and rejects in part the Magistrate Judge's R&R.

II. BACKGROUND

Plaintiff, an individual with disabilities who resides in Lyon County, Nevada, brings seven purported claims for relief relating to incidents arising from a Nevada Department of Health and Human Services Division of Welfare and Supportive Services ("DWSS") Administrative Adjudication Office ("AAO") hearing to redetermine her application and

eligibility for Supplemental Nutrition Assistant Program ("SNAP") benefits. This Court adopts the more detailed summary of the complaint's allegations in the R&R (ECF No. 3 at 3-4).

III. LEGAL STANDARD

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge's report and recommendation where no objections have been filed. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1122 (9th Cir. 2003) (disregarding the standard of review employed by the district court when reviewing a report and recommendation to which no objections were made); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the view that district courts are not required to review "any issue that is not the subject of an objection."). Thus, if there is no objection to a magistrate judge's recommendation, then the court may accept the recommendation without review*. See, e.g.*, *Johnstone*, 263 F. Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to which no objection was filed).

In light of Plaintiff's objection to the R&R, the Court conducts a *de novo* review to determine whether to adopt the R&R.

IV. DISCUSSION

The Magistrate Judge recommends granting Plaintiff's IFP Application. Plaintiff does not object to this recommendation. (ECF No. 3 at 1.) Accordingly, the Court will accept the recommendation.

The Magistrate Judge further recommends that the complaint be dismissed with prejudice in its entirety based on the doctrine of *Burford* abstention.[1] (ECF No. 3 at 6.) After performing a *de novo* review, the Court rejects the Magistrate Judge's findings in whole but accepts the Magistrate Judge's recommendations in part.

A. Claims in the Complaint

While the complaint identifies seven distinct claims for relief, three of the claims appear to be redundant.

Plaintiff's first claim is entitled "14th Amendment of the United States Constitution" and states that Plaintiff was denied adequate notice under the Due Process Clause by "[n]ot having rules on evidence exchange and not receiving information in a timely manner." (ECF No. 1-1 at 4.) The Court construes this claim as a claim for violation of Plaintiff's procedural due process rights under the Fourteenth Amendment brought pursuant to 42 U.S.C. § 1983.

Plaintiff's second claim is entitled "Constitutional [*sic*] Article VI" and states that "[c]alculations [of SNAP benefits] given by the Federal government is [*sic*] considered to be the Supreme Law of the Land" and "[d]eviations in state calculations deprive Plaintiff of the property interest in receiving benefits." (ECF No. 1-1 at 4.) The Court construes this as an attempt to bring an independent claim for relief under the United States Constitution's Supremacy Clause, U.S. CONST. art. VI, § 1, and/or a claim that the state agency officer's calculations of her eligibility for SNAP are preempted by federal law.

Plaintiff's third claim is entitled "Regulations of the Department of Agriculture 7 C.F.R [*sic*] 273" and lists a variety of Department of Agriculture ("USDA") regulations relating to SNAP eligibility determination and the process by which a state agency

[1]The R&R construes the *denial* of Plaintiff's application to be the basis for her constitutional and statutory claims (*see* ECF No. 3 at 4), but the complaint identifies the process by which the benefits hearing was conducted to be the basis for these claims and the failure of the state agency to employ federal regulations as the basis for her Supremacy Clause claim. Moreover, nowhere in the complaint does Plaintiff unequivocally ask this Court to review the state agency's denial or ask this Court to order that her SNAP benefits be reinstated.

conducts hearings to determine SNAP eligibility. (ECF No. 1-1 at 5-9 (citing 7 C.F.R. §§ 273.2, 273.8, 273.9, 273.10, 273.15).) The Court construes this claim as being redundant with Plaintiff's second claim although the Court incorporates the federal regulations cited to by Plaintiff as part of that claim.

Plaintiff's fourth claim is entitled "42 USC 1983" and states that "there is a private right of action under section 1983 to enforce the fair hearings requirement of the Medicaid Act."[2] (ECF No. 1-1 at 9.) The Court construes this claim as being redundant with Plaintiff's first claim.

Plaintiff's fifth claim is entitled "Americans with Disabilities Act of 1990 (ADA)" and states that "Plaintiff has ADHD"[3] and contends that the agency did not communicate effectively with her before or at the hearing in light of this alleged disability. (ECF No. 1-1 at 9-10.) The Court construes this as a claim for violation of the ADA under Title II. *See United States v. Georgia*, 546 U.S. 151, 154 (2006) ("Title II authorizes suits by private citizens for money damages against public entities that violate § 12132.")

Plaintiff's sixth claim is entitled "Deliberate Indifference" and states "[a]fter knowing that my right to have information before the hearing was being violated the Hearing Officer states that [*sic*] the way it is always done." (ECF No. 1-1 at 11.) Because Plaintiff cites to case law dealing with the Eighth Amendment under the heading of "Deliberate Indifference" (*see id*. at 10-11), the Court construes this as an Eighth Amendment claim brought pursuant to 42 U.S.C. § 1983.

Plaintiff's seventh claim is entitled "Breach of Contract" and states that Plaintiff's right to be heard was denied at the hearing "[b]y not being able to exchange evidence before the hearing in a reasonable time frame" and that "being able to exchange evidence should have been afforded . . . prior to the hearing." (ECF No. 1-1 at 11-12.) Plaintiff further contends that because of this failure by Defendants the conclusion

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[2]It is unclear why Plaintiff mentions the Medicaid Act as SNAP arises under the Food Stamp Act, 7 U.S.C. § 2001.

[3]"ADHD" stands for Attention Deficit Hyperactivity Disorder.

reached about her household income was not right. (*Id*. at 12.) Plaintiff does not identify a contract that has been breached, and the cases cited relate to procedural due process. (*Id*. at 11-12 (citing to *Mathews v. Eldridge*, 424 U.S. 31 (1976)).[4] Thus, the Court construes this claim as being redundant with Plaintiff's first claim.

As a result, the Court construes the complaint as alleging a claim for relief under the ADA and three independent claims for relief under 42 U.S.C. § 1983—violation of the Fourteenth Amendment, violation of the Supremacy Clause, and violation of the Eighth Amendment.

B. *Burford* Abstention

Plaintiff's objection focuses exclusively on the doctrine of *Burford* abstention and derivative arguments made against application of this doctrine to her case, as this is the sole basis upon which the Magistrate Judge recommends dismissal. While the objection is difficult to parse, Plaintiff appears to object to the applicability of *Burford* abstention on five grounds:[5] (1) federal regulations vest jurisdiction in federal courts such that this Court has federal question jurisdiction over Plaintiff's constitutional claims; (2) the state court is no better equipped than this Court to handle the issues Plaintiff has raised; (3) Article III of the United States Constitution requires this Court to exercise jurisdiction; (4) refusing to hear this now will result in the state court proceeding on this matter barring consideration by a federal court of the issues raised in this action; and (5) state policy regarding SNAP benefits determination is preempted by conflicting federal law. (*See* ECF No. 4 at 1-6.) The Court finds that the allegations in the complaint do not meet the requirements for abstention under *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

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[4]To the extent Plaintiff cites to 7 C.F.R. § 273.15 (*see* ECF No. 1-1 at 11), which requires "fair hearings" by state agencies implementing SNAP, the Court construes this as redundant with Plaintiff's second claim.

[5]To the extent Plaintiff contends that the "dismissal was due to personal feelings from another case . . . currently before the same judges and this prejudice is affecting the plaintiff *[sic*] ability to get justice" (ECF No. 4 at 4), the Court clarifies that a magistrate judge's R&R does not dismiss a plaintiff's action. The R&R merely makes findings and recommendations to the district judge for her consideration, with which the district judge may then agree or disagree.

"Because the federal courts' obligation to adjudicate claims within their jurisdiction is virtually unflagging, abstention is permissible only in a few carefully defined situations with set requirements." *United States v. Morros*, 268 F.3d 695, 703 (9th Cir. 2001) (internal quotation marks and footnotes omitted). *Burford* abstention permits courts to "decline to rule on an essentially local issue arising out of a complicated state regulatory scheme." *Knudsen Corp. v. Nevada State Dairy Comm'n*, 676 F.2d 374, 376 (9th Cir. 1982). Application of *Burford* requires three things: (1) "that the state has chosen to concentrate suits challenging the actions of the agency involved in a particular court"; (2) "that federal issues could not be separated easily from complex state law issues with respect to which state courts might have special competence"; and (3) "federal review might disrupt state efforts to establish a coherent policy." *Id*. at 377. Under *Burford* abstention, a federal court has discretion to "decline to exercise its jurisdiction when it is asked to employ its historic powers as a court of equity" and may apply "abstention principles to actions at law only to . . . enter a stay order that *postpones* adjudication of the dispute, not to dismiss the federal suit altogether." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 717, 719 (1996) (internal quotation marks omitted) (emphasis in original).

As an initial matter, this is an action in both equity and at law; Plaintiff requests declaratory relief that her rights were violated, damages of $1.9 million, and vaguely states a prayer for "injunctive, punitive, and emotional distress due to unfair treatment and loss of SNAP benefits" pursuant to Fed. R. Civ. P. 8(a)(3). (ECF No. 1-1 at 12-13.) Because the requested relief here includes claims at law and requires consideration of whether a stay is appropriate, the Court finds that an order entering a stay is inapplicable as there is no pending state action addressing the issues raised in the complaint or appealing the determination of Plaintiff's SNAP eligibility.[6] Moreover, nowhere in the

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[6]Moreover, it is unclear whether, if the Court stayed this action to permit Plaintiff to file an appeal, that she would be able to do so as the ninety-day period to appeal the hearing officer's final decision has expired. *See* NRS § 422A.295(2) (stating that an applicant for public services may within 90 days after the date on which written notice of *(fn. cont...)*

complaint does Plaintiff either directly or indirectly ask this Court to review and change the state agency's determination of her SNAP eligibility.

To the extent Plaintiff requests equitable relief, the relief requested does not implicate state law issues that require adjudication by a Nevada state court. The crux of Plaintiff's complaint is two-fold: (1) her rights under the Fourteenth and Eighth Amendments as well as under the ADA were violated by conduct occurring around and during her hearing; and (2) the state agency's calculations of her SNAP eligibility violated the Supremacy Clause and/or are preempted by federal law governing calculation of SNAP eligibility. *See Pimentel v. Dreyfus*, 670 F.3d 1096, 1099 (9th Cir. 2012) (stating that the federal government "determines uniform program-eligibility criteria and benefit-calculation formulae" for SNAP but that "individual participating states are responsible for certifying qualifying households and issuing benefits" and must "comply with applicable federal laws and regulations").

As to Plaintiff's claims that her rights were violated, long-standing Supreme Court precedent makes clear that Plaintiff's contentions that the state agency's actions at and surrounding her hearing violated her constitutional rights "authorize immediate resort to federal court" under section 1983 regardless of whether that conduct is legal under state law. *See Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 104 (1981) (citing to *Monroe v. Pape*, 365 U.S. 167 (1961), and *McNeese v. Bd. of Educ.*, 373 U.S. 668 (1963)). Moreover, the contention that the state agency failed to communicate effectively with her before or at her hearing does not necessarily implicate the state's determination of her SNAP eligibility, and Title II of the ADA provides a private right of action against states where a "qualified individual with a disability"[7] is "excluded from participation in or denied the benefits of the services, programs, or activities of a

(…fn. cont.)
the decision is mailed petition the state district court of the judicial district in which the applicant resides to review the decision).

[7]The ADA defines "qualified individual with a disability" as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, *(fn. cont...)*

public entity, or is subjected to discrimination by any such entity" by reason of her disability. *United States v. Georgia*, 546 U.S. at 153 (quoting 42 U.S.C. § 12132); *see also Duvall v. Cty. of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001).

As to Plaintiff's contention that the state agency violated the Supremacy Clause and/or that its state policy is preempted by federal regulations, the Ninth Circuit has found that *Burford* abstention is inappropriate when a claim is based on preemption, as it is not plainly an issue "with respect to which state courts might have special competence" and "because abstaining under *Burford* would be an implicit ruling on the merits." *Morros*, 268 F.3d at 705 (quoting *Knudsen*, 676 F.2d at 377).

The Court therefore rejects the Magistrate Judge's finding that *Burford* abstention applies and proceeds to screening under 28 U.S.C. § 1915.

C. Screening of Claims under 28 U.S.C. § 1915

In proceeding to screening under 28 U.S.C. § 1915, the Court adopts the standard set forth in the R&R. (*See* ECF No. 3 at 2.) Applying this pleading standard, the Court dismisses Plaintiff's ADA claim without prejudice and with leave to amend based on the deficiencies identified below. The Court dismisses Plaintiff's remaining claims against DWSS and AAO with prejudice. The Court also grants Plaintiff leave to file a Fourteenth Amendment claim consistent with the requirements set forth below.

1. Fourteenth Amendment Procedural Due Process Claim

"The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Bd. Of Regents of State Colls*. *v. Roth*, 408 U.S. 564, 569 (1972). Therefore, "[t]he first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in 'property' or 'liberty.'" *Am. Mfrs. Mut. Ins. Co. v.*

(…fn. cont.)
the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2).

Sullivan, 526 U.S. 40, 59 (1999). A person can have a property interest in continuing to receive government benefits. *See, e.g., Goldberg v. Kelly*, 397 U.S. 254, 261-263 (1970). But to have a property interest in a benefit, the person must "have a legitimate claim of entitlement to it," not just an abstract need or desire for it. *K.W. ex rel. D.W. v. Armstrong*, 789 F.3d 962, 972 (9th Cir. 2015) (citing *Roth*, 408 U.S. at 577).

However, the Supreme Court has explicitly barred suit against state agencies under 42 U.S.C. § 1983, including those claims against state agencies for violation of due process. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989) ("Section 1983 provides a federal forum to remedy many deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties."); *see also Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (Eleventh Amendment immunity applies to state agencies). Under the Eleventh Amendment to the United States Constitution, states enjoy sovereign immunity from suit brought by a state's own citizens. *Hans v. Louisiana*, 134 U.S. 1, 14-15 (1890); *see also Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 268 (1997) ("suits invoking the federal-question jurisdiction of Article III courts may [ ] be barred by the [Eleventh] Amendment"). One exception to the sovereign immunity of states has been recognized for suits suing individual state officers in their individual capacities. *See Ex parte Young*, 209 U.S. 123, 159-160 (1908); *cf. Flint v. Dennison,* 488 F.3d 816, 824-25 (9th Cir. 2007) (Eleventh Amendment bars section 1983 damages claims against state officials in their official capacity). Here, Plaintiff is suing a state agency and is seeking both a declaration that the agency violated her due process rights and damages from the alleged violation of her due process rights. Because she is not seeking prospective relief from the agency,[8] her Fourteenth Amendment claim against DWSS and AAO is

[8]Plaintiff cites to *K.W. ex rel. D.W. v. Armstrong*, 789 F.3d 962 (9th Cir. 2015), but that case permitted a Fourteenth Amendment claim against Idaho's Department of Health and Welfare because the relief requested by the plaintiffs was prospective injunctive relief to reinstate certain social assistance benefits. 789 F.3d at 974. Here, Plaintiff makes mention of injunctive relief but vaguely asks for "injunctive [*sic*] . . . due to *(fn. cont...)*

dismissed with prejudice. The Court will permit Plaintiff leave to amend this claim so that she may attempt to allege a Fourteenth Amendment claim against the agency individuals of DWSS and/or AAO that she contends violated her due process rights while acting in their individual capacities.

2. Supremacy Clause Claim

Plaintiff's Supremacy Clause or preemption claim is problematic for two reasons. First, the Supreme Court has held that the Supremacy Clause on its own does not confer a right of action for which an individual may bring suit, and it is not a mechanism by which a party may get a state to comply with federal law. *See Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378, 1381, 1384 (2015) (finding that the Supremacy Clause only instructs courts to give federal law priority when state and federal law clash and that the Court's preemption jurisprudence does not demonstrate that the Supremacy Clause creates a cause of action for its violation). Second, to the extent Plaintiff brings a preemption claim, she fails to identify what state laws or regulations, if any, are preempted by the federal regulations she cites to in her complaint and fails to specify any relief that would redress this claim in the complaint, i.e., a declaration that state law is preempted by federal law or injunctive relief that requires that the state not apply its law going forward. Moreover, the Court finds that amendment of this claim would be futile; the doctrine of preemption does not apply here because Nevada does not have any state laws or regulations on SNAP calculations. The formula for calculating SNAP benefits is set by the federal government, and the state merely creates a plan of operation to carry out the SNAP program—specifically the manner in which it certifies household eligibility and distributes SNAP benefits—that is then approved by the Secretary of the USDA. *See* 7 U.S.C. §§ 2014, 2020(a)(1) & (d). Therefore, Plaintiff's Supremacy Clause claim is dismissed with prejudice.

(…fn. cont.)

unfair treatment and loss of SNAP benefits." The Court is unsure what Plaintiff means and is unable to construe this as a request for prospective injunctive relief. (ECF No. 1-1 at 12.)

3. ADA Claim

"To prove that a public program or service violated Title II of the ADA, a plaintiff must show: (1) [s]he is a qualified individual with a disability;[9] (2) [s]he was either excluded from participation in or denied the benefits of a public entity's services, programs, or activities, or was otherwise discriminated against by the public entity; and (3) such exclusion, denial, or benefits, or discrimination was by reason of [her] disability." *Duvall*, 260 F.3d at 1135 (internal quotation marks omitted). Plaintiff avers that she has ADHD and that the agency failed to communicate with her effectively. (ECF No. 1-1 at 10.) However, these allegations fail to meet the requirements to plead a claim under Title II of the ADA. First, the Court is unclear how failure to communicate effectively falls within any of the activities identified in the second prong. Second, Plaintiff fails to make clear whether she is a "qualified individual with a disability," as in the section of this claim she only references ADHD,[10] which the Ninth Circuit has held may not qualify as a disability under the ADA unless it is shown to substantially limit the ability of an individual to perform a major life activity—such as working or interacting with others—as compared to most people in the general population. *See Weaving v. City of Hillsboro*, 763 F.3d 1106, 1111-1112 (9th Cir. 2014). An individual may also fall within the definition of a "qualified individual with a disability" if she has a record of a mental or physical impairment that substantially limits one or more major life activities or if she is "regarded as having such an impairment." *See* 29 C.F.R. § 1630.2(k) & (l). Third, Plaintiff does not state that DWSS and/or AAO were aware that she had a disability—although she notes that she is "considered to be disabled for SNAP purposes"—such that the failure to communicate or any other such action consistent with the second prong was because of her disability. (ECF No. 1-1 at 2.)

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[9] *See supra* n.7.

[10] Plaintiff notes at the outset of the complaint that she was diagnosed with bipolar depression and obesity in 2011 and is considered disabled for SNAP purposes. (ECF No. 1-1 at 2.) However, it is unclear to the Court whether any of these qualify as disabilities under the ADA. *See* 29 C.F.R. § 1630.2(g) *et seq*.

The Court therefore dismisses this claim. However, because it is unclear whether amendment may cure the deficiencies identified here, the Court gives Plaintiff leave to amend this claim.

4. Eighth Amendment Deliberate Indifference Claim

The Court finds Plaintiff's Eighth Amendment claim to be a legally uncognizable claim as the standard of "deliberate indifference" under the Eighth Amendment is wholly inapplicable to the factual circumstances that Plaintiff has alleged in the complaint. The "deliberate indifference" standard ensues from the Eighth Amendment's prohibition against "cruel and unusual [*physical*] punishments inflicted" upon *prison inmates*.[11] U.S. CONST. amend. VIII. Moreover, section 1983 generally does not apply to state agencies. *See* discussion *supra* Sec. IV(C)(i).

This claim is therefore dismissed with prejudice.

V. CONCLUSION

It is therefore ordered, adjudged and decreed that the Report and Recommendation of Magistrate Judge Valerie P. Cooke (ECF No. 3) is accepted and adopted in part.

It is ordered that Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) without having to prepay the full filing fee is granted.

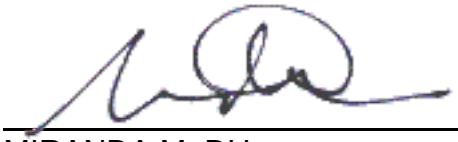
It is further ordered that the Clerk detach and file the complaint (ECF No. 1-1).

It is further ordered that Plaintiff's complaint is dismissed without prejudice as to the ADA claim and with leave to amend to cure the deficiencies with respect to this claim; Plaintiff's remaining claims against DWSS and AAO are dismissed with prejudice. However, Plaintiff is given leave to amend her Fourteenth Amendment claim to bring

[11]To the extent contentions of deliberate indifference may be brought under the Fourteenth Amendment of the United States Constitution. *see Byrd v. Maricopa Cty. of Supervisors*, 845 F.3d 919, 924 (9th Cir. 2017), this is wholly inapplicable here. There is no contention that Plaintiff was detained during this administrative hearing—she appears to have appeared by phone (*see* ECF No. 1-1 at 3)—nor is it plausible that a person would be physically detained during the regular course of a state agency hearing to determine SNAP benefit eligibility.

such a claim against individual defendants of DWSS and/or AAO acting in their individual capacities if she so chooses. Plaintiff must file an amended complaint within thirty (30) days of this order addressing the deficiencies identified herein. The amended complaint must be complete in itself. That is, it may not incorporate by reference the original complaint and should include facts relevant only to Plaintiff's ADA claim and Fourteenth Amendment claim against individual state officials if she chooses to bring it. Failure to file an amended complaint within this thirty-day deadline will result in dismissal of the ADA claim with prejudice.

DATED THIS 28th day of February 2018.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE